

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 10-46901(ESS)

4 Adv. No. 11-01520(ESS)

5 - - - - - x

6 In the Matter of:

7 SHAHARA KHAN,

8 Debtor.

9 - - - - - x

10 KRAMER AS TRUSTEE OF THE ESTATE OF SHAHARA KHAN,

11 Plaintiff,

12 v.

13 MAHIA, ET AL,

14 Defendants.

15 - - - - - x

16 U.S. Bankruptcy Court

17 Conrad B. Duberstein U.S. Courthouse

18 271 Cadman Plaza East

19 Brooklyn, New York

20 November 30, 2012

21 1:42 PM

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23 B E F O R E :

24 HON ELIZABETH S. STONG

25 U.S. BANKRUPTCY JUDGE

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Hearing re: [15] Motion for Sanctions Under USC 28 Section  
1927 Attorney Liability for Excessive Costs

Hearing re: [42] Telephonic Conference (RE: related  
document(s) 41 Letter filed by Counter-Defendant Debra  
Kramer as Trustee of the Estate of Shahara Khan, Plaintiff  
Debra Kramer as Trustee of the Estate of Shahara Khan)

Transcribed by: Jamie Gallagher

1 A P P E A R A N C E S :

2 THE LAW OFFICES OF AVRUM J. ROSEN, PLLC

3 Attorney for Debra Kramer, the Chapter 7 Trustee

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5 Huntington, NY 11743

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7 BY: AVRUM J. ROSEN, ESQ.

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15 BY: KARAM VIR DAHIYA, ESQ.

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21 BY: KARINA ALAMAR, ESQ.

22

23 ALSO APPEARING:

24 DEBRA KRAMER, ESQ.

25

1 P R O C E E D I N G S

2 THE COURT: Get your appearances on the record,  
3 please?

4 THE CLERK: Number 66 and 67 on the calendar,  
5 Kramer versus Mahia, adjourned conference and adjourned  
6 motion for sanctions.

7 MR. ROSEN: Good afternoon, Your Honor. Avrum  
8 Rosen, counsel for Debra Kramer, the Chapter 7 trustee.

9 MS. KRAMER: Debra Kramer, the Chapter 7 trustee.  
10 Good afternoon.

11 MR. DAHIYA: Good afternoon, Judge. Karam Dahiya  
12 appearing pro se.

13 THE COURT: All right. We're here on the  
14 trustee's motion to -- for sanctions as indicated in the  
15 record. This has been fixed as the date for the hearing on  
16 that motion including, if necessary, in the minds of the  
17 parties any evidence.

18 Mr. Rosen, please proceed.

19 MR. ROSEN: Thank you, Your Honor.

20 Your Honor, I would like to take a moment if I may  
21 so we --

22 MR. DAHIYA: May I get a chance to speak just  
23 briefly?

24 THE COURT: It's Mr. Rosen -- it's the trustee's  
25 motion. I want to hear from the movant first.

1 MR. DAHIYA: Okay, that's fine.

2 THE COURT: Thank you. Thank you, Mr. Dahiya.  
3 You'll have the time you need to respond.

4 MR. ROSEN: Your Honor, I just want to -- there  
5 have been a lot of -- in the last couple of days, there have  
6 been a lot of papers flying back and forth, and letter  
7 motions, and other types of things.

8 I had a letter going out, actually, before you  
9 issued the decision yesterday, and -- which I obviously  
10 agree with in terms of proceeding today.

11 I just also wanted to supplement the record since  
12 I anticipate an appeal in this matter to point out one other  
13 point that was not -- that was not raised. And that is  
14 Bankruptcy Rule 5011, which controls proceedings when a  
15 notice of removal is filed and expressly says that it has --  
16 does not stay any action pending in the bankruptcy, unless a  
17 motion, and not a letter, a motion is made in the first  
18 instance to the bankruptcy judge requesting that release --  
19 relief on certain grounds. And then if that is denied at  
20 that level, then it can be made to the District Court. But  
21 over and above that, the bankruptcy rules require the motion  
22 to go forward.

23 So, I just wanted the record -- in addition to the  
24 reasons Your Honor put in -- on the decision, I wanted the  
25 record to be supplemented that I wasn't going to put up a

1 letter after you had already decided. I was literally about  
2 to file it as your decision hit the screen.

3 THE COURT: It seemed to me important to give the  
4 parties some clarity as to whether it -- how were proceeding  
5 the filing at the -- of the November 29th letter by  
6 Mr. Dahiya posed at a late stage the question of whether  
7 there should be an adjournment. I assume you mean, there  
8 has been more than one order entered of late.

9 MR. ROSEN: No, I mean the one before that in  
10 response to the letter from his special counsel --

11 THE COURT: Special counsel.

12 MR. ROSEN: -- who is -- the one a couple of days  
13 earlier that --

14 THE COURT: Yes. That would --

15 MR. ROSEN: So that's what I'm speaking to.

16 THE COURT: Number 56 on the docket.

17 MR. ROSEN: Yes. All right. So, and you issued,  
18 I think, a memo endorsed on the letter, a decision --

19 THE COURT: Yes.

20 MR. ROSEN: -- saying that it would go forward.

21 And this is just an additional reason why that request was  
22 not a proper request, was not in proper form, and why the  
23 contents of that letter were incorrect in that the filing of  
24 a motion to withdraw the reference, even if it were  
25 appropriate in this case, which I don't think it was, does

1 not stay the proceeding absent a court order that says it  
2 does. All right? So, there was that issue.

3 The second issue, Your Honor, this morning I got  
4 the beep on my blackberry and went and looked on the  
5 computer, I saw you issued an order on the jury demand. And  
6 in addition on that decision, I would like to supplement the  
7 record to point out that the jury demand I had just simply  
8 treated, while all of your reasons are also correct, I had  
9 treated as a nullity because that would have had to been  
10 raised in the first responsive pleading in this motion, and  
11 I do not believe that it was either. It was not --

12 THE COURT: It's an interesting situation because  
13 it's flagging the adversary proceeding, but of course that's  
14 a different matter concerning different parties.

15 MR. ROSEN: Correct, Your Honor. So, with those  
16 two things said, Your Honor, today how I think we should  
17 proceed and you are, of course, the one who will tell me.  
18 We previously prepared in this matter, when Mr. Dahiya still  
19 had counsel, the pre-trial statements were prepared. They  
20 were put in. We kind of started on all of that.

21 We've put in, in terms of that matter the last  
22 time I was on the record, I went through and I'm prepared to  
23 do it again. Mr. Dahiya in his pre-trial statement pretty  
24 much admitted, I think, matter of fact, I can go through the  
25 paragraphs of ours, admitted all of the relevant allegations

1 that had been set forth in Ms. Kramer's affidavit as part of  
2 the motion and that had been put in.

3 And precisely, he admitted paragraphs 1 through  
4 14, 16, 17, and 19, which are pretty much all of the  
5 operative paragraphs here, and did not deny paragraphs 22 to  
6 27, which are the paragraphs that actually lay out what  
7 Mr. Dahiya's intent was in terms of bringing these actions,  
8 which I think he's been pretty clear in admitting that he  
9 did for leverage purposes, which we maintain was not -- were  
10 not proper because they were not valid issues of law.

11 So, in terms of how to proceed here, I would like  
12 to put in, to the extent that we've got the pretrial  
13 statement with all the allegations in, if there's anything  
14 there that hasn't been admitted, and put that statement in  
15 as a proffer, and if Mr. Dahiya wants to cross-examine  
16 Ms. Kramer on anything contained in there, I think that's  
17 appropriate.

18 As --as far as the allegations on damages, I have  
19 with me today and will hand up, I ran last night, an updated  
20 bill because part of the damages had been my firm's bill for  
21 services rendered up through June 1. I ran the bill from  
22 June 2 through today with an anticipation of, I think, two  
23 or three hours for this hearing all told, and ran that bill.  
24 And I have that bill.

25 And I'm prepared, even though I don't have counsel



1 here, I did not want to bring another attorney from my firm  
2 and run up the bill even more. All right? I'm prepared to  
3 take the stand and be cross-examined without benefit of  
4 counsel on any -- if he questions the need, or the amount,  
5 or of any of the services.

6 Other than that, Your Honor, I think the legal  
7 issues have been briefed and argued many, many times in this  
8 case. I think the -- I don't think there's very much  
9 disputed evidence, and that's how I would anticipate  
10 proceeding. Unless you have questions for me, I'll let  
11 Mr. Dahiya have his turn.

12 THE COURT: Well, it's the trustee's motion, you  
13 have the burden and what I would foresee proceeding is to  
14 invite you to make your record. And if you'd like to make  
15 it by proffer, I think that's generally an acceptable  
16 procedure and I think it would be acceptable here if there's  
17 an interest in -- if Mr. Dahiya would like to cross-examine,  
18 he can do so. But, I think that's a fine way to proceed.

19 MR. ROSEN: All right. I don't know if you want  
20 me to make that proffer now or if you want to allow him to  
21 be heard with any preliminary matters he wants to raise.

22 THE COURT: All right. Well, I -- here's how I'd  
23 like to proceed. You can, understanding that there is no  
24 jury, and so you are before a Court who's well familiar with  
25 the issues in the case, you can nevertheless make a brief

1 opening statement and Mr. Dahiya the same, and we'll  
2 consider whether we need closing argument at the end.

3 So, I'll take your opening statement on the motion  
4 and then Mr. Dahiya's.

5 MR. ROSEN: Thank you, Your Honor.

6 Your Honor, this is a motion that was brought  
7 pursuant to Section 19 -- Section 1927, which has been laid  
8 out in detail in the papers. It is based upon the course of  
9 dealing of Mr. Dahiya in multiple actions against trustees  
10 of bringing actions against those trustees, either without  
11 getting Court approval under the Barton doctrine, where  
12 appropriate, or basing it upon theories of the law which are  
13 completely not supported in well-established case law in  
14 these matters under either abuse of process or -- and  
15 alleging vague constitutional torts.

16 And in doing it, as we laid out in detail in the  
17 papers, in multiple cases, including after a decision was  
18 rendered by Judge Trust specifically telling him that such  
19 an action does not lie as part of the case in chief when  
20 disputing the allegations in an adversary proceeding, he  
21 then did it again in an action before Judge Craig. He did  
22 it in -- again in a case before Judge Feller, in which  
23 Ms. Kramer was involved. And he did it again before -- in  
24 this Court bringing it -- and admitting in various times  
25 before this Court that he does it because of his belief that

1 the Bankruptcy Code should be written other than it is  
2 written, and that in terms of his battle for what he  
3 perceives, and I don't think it's necessarily based in  
4 reality, but in what he perceives as his need to obtain  
5 leverage to help people who he believes do not have  
6 appropriate leverage. And the way to do that is to bring  
7 lawsuits against trustees, whether they be grounded -- well  
8 grounded in law or fact.

9 And, in fact, in the case, in this action, having  
10 now sued Ms. Kramer for the second time in a short period of  
11 time in an action, he caused -- he caused her damage. He  
12 caused damage in that she was initially dropped by her  
13 insurance carrier for having multiple actions, and  
14 eventually got coverage but at double the deductible so that  
15 each time one of these actions is brought, she now has to  
16 lay out, I believe, \$5,000 on a deductible instead of \$2,500  
17 of her own money to defend these actions.

18 He's also brought these actions ignoring the  
19 limited quasi-judicial immunity that trustees have. He's  
20 ignored that. In the performance of their trustee duties,  
21 and every single one of these actions has involved a trustee  
22 and the exercise of his or her duties.

23 In this action, I think we laid out in sufficient  
24 detail that he was given numerous opportunities to withdraw  
25 the action. He knew that if Ms. Kramer made the motion to

1 dismiss the actions, she was going to have to turn it over  
2 to her carrier. She was going to have to incur the expense  
3 on the deductible. And she was going to have -- then have a  
4 claim, even if he were -- even, and as it was presumed, I  
5 think we all -- everyone one else knew, she was successful  
6 on that motion, she would have still been damaged.

7 And I think on various occasions, either the first  
8 and perhaps even the second time when we were here, he's  
9 admitted as much on the record. He has said that, you know,  
10 he believed that it had to be done for leverage purpose.  
11 And that is precisely what the statute is written to  
12 prevent.

13 Previously, and I think you ruled on all of those  
14 matters, issues were raised as to whether or not it had to  
15 be in one proceeding. Mr. Greenwald (ph) raised that issue  
16 and Your Honor, I think, made an oral ruling on that.

17 We went through the issues as to -- well, I take  
18 that back. We -- so in going forward on those issues, it  
19 became abundantly clear that Mr. Dahiya both still believed  
20 and still intended to go forward with this course of action.  
21 Given that circumstance, if this trustee, on her own behalf  
22 and to a certain degree on behalf of other trustees, felt  
23 the only way she could administer cases if he was one,  
24 forced to bear the brunt of the expense for taking these  
25 improper actions, and secondly, if he was prohibited,

1 expressly, by a court order from doing that which the law  
2 already prevents him from doing, which is, you know,  
3 commencing actions against trustees without Court  
4 permission.

5 You know, he creates an interesting conundrum in  
6 his papers because he says first when he files all of these  
7 answers, he immediately in the answer says this Court  
8 doesn't have jurisdiction to do anything. I mean, he  
9 doesn't, I don't think, think this Court has jurisdiction to  
10 do literally anything anymore after the Supreme Court  
11 decisions. And at the same time, he says it's now a  
12 District Court action.

13 But trustees are appointed by this Court, so that  
14 would mean that he would have to get permission from the  
15 appointing Court. He tries to get around that, says, well  
16 yeah, but you're not really a court, you're just a division  
17 of the District Court and -- so that's okay.

18 However, we, in our papers, had pointed out the  
19 case, and I can't remember the name right now but it's in  
20 our brief, from the District of Connecticut where someone  
21 actually sued a trustee in the U.S. District Court and that  
22 judge said no, you didn't get permission under the Barton  
23 doctrine. Case is dismissed. You have to go back to the  
24 Bankruptcy Court.

25 So, the District Court, at least, one -- the only

1 Court that's addressed that issue within the Second Circuit  
2 has said that argument doesn't fly.

3 And, unfortunately, to make matters worse in this  
4 case, the -- the response to a claim under 1927 that he is  
5 vexatiously multiplying proceedings, the response to it has  
6 been to further vexatiously multiply the proceedings.

7 We have had his own pleadings. We've had him get  
8 counsel, which was the smartest thing he probably did, who  
9 put in at least, you know, a pre-trial statement that  
10 attempted to deal with the legal issues and do everything.  
11 He entered in -- he spent an immense amount of everyone's  
12 time.

13 He entered into a settlement agreement on the  
14 record. He then reneged on that settlement agreement. He  
15 then fired his counsel. He then filed, while claiming that  
16 he was destitute and not able to do anything, filed, which  
17 Your Honor may not be aware, got expedited transcripts from  
18 all of the cases involved, never attached them to his  
19 papers, because I assume whoever saw them decided not to use  
20 them, but went out and spent the money to get expedited  
21 transcripts all over the place. Got a new attorney to write  
22 a -- well, prepared, obviously with someone else helping  
23 him, if you know Mr. Dahiya's writing style, prepared a, I  
24 think, 96 or 98 page motion to withdraw the reference, filed  
25 it. Filed another affidavit that he wrote.

1           Had an attorney make something called a special  
2           appearance in the District Court for that purpose, but file  
3           a letter, or a letter motion, in this Court, even though  
4           they weren't appearing here to try and stop it.

5           And then after that, attempted to get an  
6           adjournment by claiming you can't make me go forward, I'm  
7           pro se, even though he's been basically begged by everyone  
8           in this Court -- in this courtroom to get an attorney. And  
9           when he did, he simply refuses to listen to that attorney.  
10          He's going to keep looking for an attorney, I think, who  
11          will take the position he wants him to take, and I think  
12          he's probably the only attorney that will do that, who  
13          practices before this Court.

14          So, we're not here on a pleasant occasion, but the  
15          issue at hand is whether or not trustees are going to be  
16          able to do their job without being the victim of these kinds  
17          of tactics. And I think that the answer to that is they  
18          can't do their job, and that this Court has to on the record  
19          before it, in terms of what's been put in evidence already,  
20          or submitted as not disputed evidence in the pretrial.

21          And I note for the pretrial everything that we  
22          submitted was put in. There was no objection. You have our  
23          pretrial statement. You have all of our documents. I've  
24          got my amended bill, which I will hand up.

25          I think this Court has no option but to find that

1 Mr. Dahiya and his firm have violated 1927, as well as under  
2 the law that we set forth under Section 105, and the case  
3 law we gave you there, and to fashion a remedy which is  
4 along the ones, which is a sizeable fine -- to make sure  
5 that the trustee and her counsel are compensated for all of  
6 the hoops that he's made us jump through, that a proper  
7 order is put in place to stop him from doing this with then  
8 having the repercussion of being in contempt of that order  
9 as a practicing attorney if he violates it. And I don't  
10 think, based on the record that's before this Court, that  
11 there's any other result that could be reached.

12 Thank you.

13 THE COURT: Are you familiar with cases that have  
14 issued relief under Section 1927 that include the kind of  
15 prescriptive relief that you've asked for here?

16 I think a customary consequence of a violation of  
17 1927 is more in the nature of a monetary sanction, but I --

18 MR. ROSEN: That may be true, Your Honor. I am  
19 aware of -- I --

20 THE COURT: And when it's calibrated to correspond  
21 to the nature and extent of the consequences of the  
22 violation.

23 MR. ROSEN: If not under there then -- if not  
24 under 1927, it's a good question. If not under 1927, then  
25 clearly under 105.



1           There have been numerous orders, and I don't know  
2           that they ever get up to the point of being written  
3           decisions, but there have been numerous decisions out of  
4           this Court at various times that have put all kinds of  
5           restrictions on attorney practice.

6           I just -- from course, let's say, you know, you  
7           can't come back here until you do this. You can't do this  
8           until you file that. I mean, I think this Court clearly  
9           under its inherent jurisdiction to supervise the matters  
10          that go on before it and under 105 have the power to issue  
11          that kind of order.

12          I mean, the -- especially in light of the fact  
13          that regardless of the veracity of it, and I have no way of  
14          knowing it one way or the other, of Mr. Dahiya, who claims  
15          that he has judgment proof, than without some kind of  
16          prescriptive order, which would have some teeth on it if  
17          it's violated, then a mere monetary award that he has no  
18          ability to pay other than the usual requirements of an  
19          attorney to pay any judgment against him. But that's a  
20          sticky (indiscernible - 2:02:26) to go down. Then the  
21          relief is not meaningful.

22          And I think when you're going to try and give  
23          injunction -- injunctive relief in that regard, that -- that  
24          that's one of the things that you have to look at.

25          I mean the short answer to that question might be,

1       okay, so every time he does it, he's going to get hit with a  
2       large monetary sanction. If he has no intentions or the  
3       ability to necessarily pay any of those monetary sanctions,  
4       that's not a lot of a disincentive, other than --

5               THE COURT: Understood. It's still a question in  
6       my mind and it -- I don't mean to presuppose the outcome of  
7       the questions raised under Section 1927, but it's a --

8               MR. ROSEN: But the short answer to your question  
9       as I stand here, Your Honor, I don't think under 1927, no.  
10       I know under 105, Courts in this Court and other Courts have  
11       prohibited attorneys from practicing law unless they were  
12       partnered with someone who knew what they were doing, or if  
13       they took courses, or requiring them to show certain special  
14       circumstances, which is what we're doing.

15               And in reality, Judge, all that we're requesting  
16       for him to do with that injunctive relief is to do that  
17       which he should do anyhow under the law. And it would just  
18       be a mechanism by which a Court would review the matter  
19       before the trustee was damaged by having to deal with being  
20       sued and turning the matter over to their carrier, or risk  
21       dealing with it on their own by not.

22               I mean, part of the reason why we had to proceed  
23       by 1927 is that the carrier, you know, otherwise, this was  
24       the matter that the carrier did not have any say so over,  
25       okay? If we were to proceed within the case, than the

1 carrier has to come in and do it. Carriers will never,  
2 ever, ever seek sanctions or -- they're only worried about  
3 that particular case. They're not --

4 THE COURT: They have different duties owed to  
5 different parties, but of course owed to their insured. A  
6 trustee and an attorney who appears in this Court, as an  
7 officer of this Court, has a different set of duties and  
8 obligations. I appreciate that difference.

9 MR. ROSEN: Okay. Thank you. Thank you, Your  
10 Honor.

11 I will -- unless you have any other questions for  
12 me, I'll --

13 THE COURT: No, but --

14 MR. ROSEN: -- let Mr. Dahiya make his statement.

15 THE COURT: -- the -- your question of procedures  
16 and the question of possible remedies are the two questions  
17 in my mind for your opening statement.

18 Mr. Dahiya, I'd like to hear your opening  
19 statement.

20 MR. ROSEN: Thank you.

21 MR. DAHIYA: May it please the Court, Your Honor.  
22 I'm here today because you instructed me to be here as an  
23 officer of the Court, and as a person who's being impacted,  
24 I was supposed to be here.

25 Your Honor has cancelled -- denied my request for

1 an attorney and --

2 THE COURT: Mr. Dahiya, let's stay with that for a  
3 moment.

4 MR. DAHIYA: Yeah, but it just --

5 THE COURT: I did not deny your request --

6 MR. DAHIYA: Okay.

7 THE COURT: -- for an attorney. I --

8 MR. DAHIYA: All right, just --

9 THE COURT: -- have encouraged you at every  
10 hearing --

11 MR. DAHIYA: Sorry, you're right.

12 THE COURT: -- to retain an attorney.

13 MR. DAHIYA: Sorry about it. I --

14 THE COURT: As recently as --

15 MR. DAHIYA: Your Honor --

16 THE COURT: -- the 29th, it appears you filed a  
17 new case in this Court. Is that right, Mr. Dahiya?

18 MR. DAHIYA: It was a (indiscernible - 2:05:36)?

19 THE COURT: Did you file a case in this Court as  
20 recently as November 29th? Yesterday?

21 MR. DAHIYA: This -- I don't think so, did I --

22 THE COURT: Another bankruptcy case?

23 MR. DAHIYA: Yes, I filed another bankruptcy case,  
24 yes.

25 THE COURT: All right. So, you're filing cases in

1 this Court as recently as yesterday. Please proceed. I  
2 take that as some evidence of your ability to function  
3 professionally.

4 MR. DAHIYA: Yeah, yeah. That's not the -- the  
5 request -- the request was made for an adjournment and you  
6 denied it.

7 THE COURT: I did.

8 MR. DAHIYA: Yes. And, respectfully, Your Honor,  
9 I'm here and I've filed a motion to withdraw the reference,  
10 which is pending. I do have any attorney there and the  
11 paperwork that I prepared for withdrawal of reference is  
12 totally my creation. It's my work.

13 THE COURT: I've --

14 MR. DAHIYA: Mr. -- Mr. -- that's my writing.

15 THE COURT: You signed it pro se.

16 MR. DAHIYA: Yeah, it's me -- no, with not  
17 signing. There was an issue with signing the paperwork  
18 before.

19 THE COURT: Let's stay with your --

20 MR. DAHIYA: Okay, that's --

21 THE COURT: -- opening on the motion before me  
22 today.

23 MR. DAHIYA: I will not participate in this  
24 proceeding, Your Honor. I've invoked my right to be heard  
25 by an Article III Judge. Respectfully, Your Honor, I'm

1 here, and I will not participate without an attorney. I've  
2 contacted the bar. I've got in touch with people to  
3 represent me.

4 THE COURT: Tell me who you have contacted.

5 MR. DAHIYA: I contacted Michael Ross. Michael  
6 Ross is an attorney. I contacted two other attorneys and  
7 they -- I contacted -- and counsel who is to be with the  
8 disciplinary committee of the appellate division. And he  
9 knows -- Mr. Krishman (ph) had given his number to me. He  
10 wants to charge me \$650 an hour. He says he will hire his  
11 junior counsel. He will hire his junior counsel.

12 So, what happens was with Michael Ross, he says,  
13 Mr. Dahiya, this is a very abstruse law. You will be paying  
14 me to teach me -- you'll be paying me to tell me what this  
15 law is all about. So, he didn't know --

16 THE COURT: Mr. Dahiya.

17 MR. DAHIYA: Yes.

18 THE COURT: I'm interrupting you for the following  
19 reason. Your communications with a potential counsel --

20 MR. DAHIYA: Yeah. It's privileged.

21 THE COURT: -- are privileged, unless you waive  
22 the privilege, which you are in the process of doing. So, I  
23 urge you not to waive it because it may be important to you  
24 down the road, that whatever you said to a lawyer who you  
25 are seeking to retain to represent you on a matter as

1 important as this, should remain, if it can remain --

2 MR. DAHIYA: Yes, Your --

3 THE COURT: -- confidential and privileged.

4 MR. DAHIYA: And brief --

5 THE COURT: I say this with your interest  
6 uppermost.

7 MR. DAHIYA: Yes. Briefly put, Your Honor, I have  
8 tremendous respect for you, and you as a Judge and a  
9 compassionate person. And with the trustee's who's doing  
10 their job, there's no personal thing here. I'm fighting for  
11 dignity of law, and I have no -- I mean, I'm fighting for  
12 some principals. And I've invoked the right, because the  
13 right to represent people is being impacted. I invoked the  
14 right to be heard by a District Court judge, and I will not,  
15 under these circumstances, I don't have an attorney. I  
16 don't feel comfortable representing myself. I will not  
17 proceed on the merits of this case, Your Honor. That's all.

18 THE COURT: Mr. Dahiya, did you not represent  
19 yourself in the extensive submissions that were made to the  
20 District Court as recently as November 19th, signed by you,  
21 compiled authored by you, as you've just indicated?

22 MR. DAHIYA: The page -- the 79 pages, the  
23 withdrawal of reference was prepared by me, filed by me.

24 THE COURT: Has anything changed since  
25 November 19th in your ability to function professionally?

1 MR. DAHIYA: No, but I cannot -- I have invoked  
2 the right to be heard by an Article III Judge, and I cannot  
3 here, in this Court. I do have an attorney in the District  
4 Court and it is -- and hearing about me and issues related,  
5 I don't feel comfortable. I don't want to get into the  
6 merits of the case.

7 And I had requested an adjournment for two  
8 reasons, Your Honor. One, by the time I think the District  
9 Court would have done something about it. Second, I will  
10 have time to get an attorney who knows about the subject,  
11 and whom I can afford to make payments. I am not a rich  
12 lawyer. My client had paid me \$250 for this case. I can  
13 submit my bank statement if someone wants to see it. I have  
14 no problem with this, but I cannot proceed.

15 That's all, Your Honor. That's what it --

16 THE COURT: Mr. Dahiya.

17 MR. DAHIYA: Yes, Your Honor.

18 THE COURT: As this Court has previously noted,  
19 "the Second Circuit has held that a Bankruptcy Court may  
20 impose sanctions pursuant to 28 U.S.C. Section 1927 if it  
21 finds that an attorney's actions are so completely without  
22 merit as to require the conclusion that they must have been  
23 undertaken for some improper purpose such as delay," citing  
24 In re Ambotiene, 316 BR 25 at 34, note 2. A decision over  
25 my signature but of this Court, Bankruptcy EDNY 2004,



1 quoting Baker versus Latham Sparrowbush Associates, In re  
2 Cohos Industrial Terminal Incorporated, 931 F.2d 222, 230  
3 (2nd Cir, 1991), referencing back to my own decision  
4 affirmed 2005, U.S. District Lexus 45314 (Eastern District  
5 of New York, September 30, 2005).

6 I refer you also to the decision of the Bankruptcy  
7 Court of the Southern District of New York, In re Emanuel  
8 2010 Bankruptcy Lexus 590 at \*3, note 2, stating that,  
9 "Bankruptcy Courts may impose sanctions under 28 United  
10 States Code Section 1927.

11 I refer you to In re Green, 422 Bankruptcy  
12 Reporter 469 at 473. Again a decision of the Southern  
13 District of New York, explaining that a Bankruptcy Court,  
14 "has the power to sanction," under 28 United States Code  
15 1927.

16 Accordingly, and as previously indicated in my  
17 order entered on November 28, 2012, at 8:35 in the morning,  
18 I find that I may decide this motion for sections under 28  
19 U.S.C. 1927.

20 So, based on that, noting that the motion was made  
21 some time ago and has been scheduled for hearing, and  
22 hearings have been held on some or all of April 24, 2012,  
23 June 16, 2012, July 16th, September 13th, and  
24 November 20, 2012, noting that some of those dates may have  
25 been adjourned without hearing. But on more than one of

1       them, a hearing was, in fact, held. At some of which  
2       hearings, you had counsel. At one of which hearings, there  
3       was a settlement put on the record that you have now  
4       withdrawn from.

5               Mr. Dahiya, this is not a happy time --

6               MR. DAHIYA: I did not --

7               THE COURT: -- for anyone in the courtroom, but I  
8       do not see that there's any benefit, including to you, by  
9       deferring or putting this off. I do not see what more time  
10      can possibly do, having read when they were filed, and read  
11      again on the short break I had from my morning calendar  
12      before today.

13              Your submissions in this Court and elsewhere, it  
14      seems to me that I can only do my job, my limited but  
15      important job, by hearing this matter and marking it  
16      submitted today. If you want to try to resolve it, you  
17      always have that opportunity in my courtroom. I think you  
18      know that.

19              I respect the determination that you bring to your  
20      matters, but you must temper that determination with  
21      judgment. And the question before me in this 1927 motion is  
22      a question as to which there is a legal standard, as to  
23      which we are going to make a record, and then I'll do my  
24      best to give my best decision.

25              But it's not something I view is a happy occasion.

1 MR. DAHIYA: I fight --

2 THE COURT: But it's my job, Mr. Dahiya.

3 MR. DAHIYA: I respect you, Your Honor. I --

4 you're a highly calibered (sic) jurist and I also stand for  
5 certain principals and dignity of law. And today, I will  
6 not say anything.

7 I have objections to the jurisdiction of this  
8 Court. I have submitted my paperwork regarding that, if you  
9 have read the withdrawal of reference. I don't want to get  
10 into the merits of the case. I've decided.

11 It's up to you, Your Honor. You decide whatever  
12 you want.

13 THE COURT: Well, and I --

14 MR. DAHIYA: I have --

15 THE COURT: -- need to note this, Mr. Dahiya,  
16 before you leave the point of jurisdiction. If I believed I  
17 did not have subject matter jurisdiction, I would not need  
18 your motion, because I cannot proceed in the absence of it.  
19 I'm satisfied from reviewing closely and carefully the  
20 cases, including Stern v. Marshall, and --

21 MR. DAHIYA: No --

22 THE COURT: -- what comes after it, that the  
23 issues raised therein and identified and allocated by the  
24 Supreme Court in some detain, do not concern specifically  
25 subject matter jurisdiction, but rather the allocation of

1 power to decide between the District Court and the  
2 Bankruptcy Court.

3 Having reviewed the decisional authority in this  
4 Circuit, under this Section of the judiciary code, I'm  
5 satisfied there's a basis to proceed. It may be that in  
6 entering my decision, whichever way it goes, I may in the  
7 alternative find that to the extent appropriate, a District  
8 Court may treat my work product as proposed findings and  
9 conclusions, so that there is a basis, in fact multiple  
10 basis, upon which to proceed today.

11 I return to the invitation to complete your  
12 invitation with respect to the motion, and then I'm going to  
13 ask Mr. Rosen to proceed and make his record.

14 Do you have anything further on the motion?

15 MR. DAHIYA: No. I have -- I will not participate  
16 in the -- I've told Your Honor. I have invoked the right  
17 for an Article III Judge, and not that I have anything  
18 against this Court. And I don't have an attorney today, so  
19 I will not -- I have not been able to find, I found someone  
20 I cannot afford, and so it's been a very difficult -- and I  
21 know it. This is a very --

22 THE COURT: Of that, I have no doubt.

23 MR. DAHIYA: -- this is a very important thing  
24 that you're deciding and I'm just trying to bring the life  
25 and the principals at stake, and the job of the trustee, and

1 your job to manage the calendar.

2 THE COURT: This is more than just managing the  
3 calendar, Mr. Dahiya.

4 MR. DAHIYA: You know, but they -- this is -- and  
5 Your Honor has -- I mean, I will not -- don't want to get  
6 into jurisdiction or any issues, I made myself clear, I've  
7 put in my withdrawal of reference the cases pending, and  
8 it's up to Your Honor.

9 I mean, if I have more time, I could get an  
10 attorney who's probably more enlightened than me, can brief  
11 this Court, tell the issues and I've nothing else to say.

12 THE COURT: All right. Thank you, Mr. Dahiya, you  
13 may be seated. Mr. Rosen, could you please make a proffer  
14 or call your first witness, if you please.

15 MR. ROSEN: Your Honor, I would like --

16 THE COURT: I will ask those who are in attendance  
17 -- first of all, thank you for your appearance, whoever you  
18 are. This is a public proceeding and I'm thankful for your  
19 presence.

20 If you'd like to put your appearance on the record  
21 if you are counsel, I urge you to do so. If you are here in  
22 any other capacity, please be seated and you can observe  
23 respectfully as any member of the public is always welcome  
24 to do here in our Court.

25 UNIDENTIFIED SPEAKER: I apologize, Your Honor.

1 MS. ALAMAR: Your Honor, if the Court please --

2 THE COURT: You're not at a microphone. If you're  
3 appearing, you need to come up and put appearance on the  
4 record.

5 MS. ALAMAR: Good afternoon, Your Honor, Karina  
6 Alamar, 6089 Myrtle Avenue, Ridgewood, New York.

7 THE COURT: Are you admitted to the bar of this  
8 Court?

9 MS. ALAMAR: Yes, I am, Your Honor.

10 THE COURT: All right.

11 MS. ALAMAR: And I would ask --

12 THE COURT: Do you represent a party?

13 MS. ALAMAR: Your Honor, I would be asking that  
14 the Court please concede five minutes -- a five minute  
15 recess so that we could speak to Mr. Dahiya to see --

16 THE COURT: Who do you represent, ma'am?

17 MS. ALAMAR: We are trying to represent  
18 Mr. Dahiya.

19 THE COURT: Has he retained you?

20 MS. ALAMAR: He has not retained us. We're asking  
21 for five minutes to see if he will allow us to appear on his  
22 behalf.

23 THE COURT: Whenever a party requests a five  
24 minute recess, I'm inclined to grant it if you think it  
25 would be used productively. I urge you to use the time in a

1 productive way.

2 MS. ALAMAR: Thank you, Your Honor.

3 THE COURT: Thank you.

4 THE CLERK: All rise.

5 (Recess at 2:18 PM)

6 THE COURT: Good afternoon. Please be seated.

7 Our break was a little longer than requested. I understand  
8 from my courtroom deputy that the parties had some  
9 consultations, but that we're now proceeding. Is that  
10 right?

11 MR. ROSEN: That's correct, Your Honor.

12 THE COURT: All right.

13 MR. ROSEN: We made a couple last ditch attempts,  
14 but they were not successful.

15 THE COURT: All right. Well, of course the  
16 prospect is never foreclosed.

17 Mr. Rosen may -- would you --

18 MR. ROSEN: Your Honor --

19 THE COURT: I'd like to receive the record.

20 MR. ROSEN: Excuse me.

21 THE COURT: I'd like you to make your record.

22 MR. ROSEN: Thank you, Your Honor.

23 THE COURT: Call your first witness, or if it's a  
24 proffer, then --

25 MR. ROSEN: Your Honor, I would like to make a

1 proffer. I would point out that Debra Kramer, that Chapter  
2 7 trustee, is here present in the courtroom, and that if I  
3 were to call her to the stand, which she is prepared to  
4 take, she would testify in accordance with the statement of  
5 material facts in this -- in this case.

6 The basic statement of facts was set forth  
7 pursuant to this Court's order in the pretrial -- pre-  
8 hearing statements for this motion, and the -- Mr. Dahiya's  
9 counsel filed a responsive pleading and admitted virtually  
10 all of the facts.

11 I can either read those facts into the record, or  
12 I can refer to them by paragraph number, Your Honor, in  
13 terms of them -- whichever you think would be more  
14 expeditious and you think lead to the better record.

15 THE COURT: Could you identify by docket number  
16 the items that you are referring to? I have number 34, the  
17 pre-hearing statement for response to motion.

18 MR. ROSEN: I don't have it on my -- I've got a  
19 pre-hearing statement for motion to impose monetary  
20 sanctions that was prepared on -- the last time we were  
21 here, Your Honor, I gave you one of these books. I can give  
22 you another one if you don't have it. It was all --

23 THE COURT: I have the binders that were provided.

24 MR. ROSEN: If you have that binder and go to that  
25 statement. Yes, we gave it to you in a book, I believe. We



1 got the cheap binders, you got the good loose leaf. There's  
2 probably one for the witness and one for you. I probably  
3 left -- well, I gave you one for you and one for you law  
4 clerk.

5 THE COURT: I think that's right. The one seems  
6 thicker than the other. All right. Pre-hearing statement.  
7 I have it before me.

8 MR. ROSEN: Okay, so if -- if you go to that -- I  
9 have marked mine up. You can, of course, check me on it  
10 later, but I will let you know which statements were  
11 admitted by Mr. Dahiya --

12 THE COURT: Yeah.

13 MR. ROSEN: -- in his pretrial, Your Honor. And I  
14 can read -- and, as I said, I can read them out, or I can  
15 refer to them by paragraph number.

16 If you go to the second page, the first numbered  
17 paragraph just says -- does not assert anything. It's just  
18 the introductory paragraph.

19 Then it's -- then paragraph -- there is no  
20 material dispute as to paragraphs 2, 3, 4, 5, 6, 7, 8, 9,  
21 10, 11, 12. And I'd stopped there for a second, Your Honor,  
22 just to point that those paragraphs lay out the trustee's  
23 due diligence in going through the 341 meeting, the  
24 investigation that she engaged into, what she did in  
25 determining the basis for the action as part of the due

1 diligence. All right?

2 THE COURT: And just to be clear, these are, as  
3 identified in the statement, filed by Mr. Dahiya in number  
4 34 on the docket, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12?

5 MR. ROSEN: Yes.

6 THE COURT: Okay.

7 MR. ROSEN: All right? And those were all --  
8 those were all --

9 THE COURT: Those are not -- those are indicated  
10 not in dispute according to Mr. Dahiya's filing of  
11 September 10th, number 34 on the docket.

12 MR. ROSEN: Correct, Your Honor.

13 Then, actually, paragraph 13, which relates to  
14 Mr. Dahiya's first involvement in the case is also not  
15 disputed.

16 THE COURT: Correct.

17 MR. ROSEN: As is paragraph 14, paragraph 15, I  
18 believe there was no response to it, and that was our  
19 statement as to characterizing the answer as a personal  
20 attack on the trustee and her counsel. That is an  
21 allegation that we make based upon the other evidence.

22 THE COURT: Paragraph 15 is identified as in  
23 dispute at Paragraph 10 of Mr. Dahiya's submission.

24 MR. ROSEN: Yes. All right, so the intent, we  
25 believe that can be conferred from all the other

1 circumstances.

2 Paragraph 16 is admitted. Paragraph 17 is  
3 admitted. And these paragraphs just quote language from the  
4 answer and counterclaims filed by Mr. Dahiya.

5 Paragraph 18, I believe, Your Honor, I don't have  
6 -- mine's not marked up. I believe they had no response to  
7 it. But that is Ms. Kramer's testimony as to the affect of  
8 her malpractice carrier and if called to the stand, she  
9 would so testify.

10 THE COURT: So far as I can tell, paragraph 18 is  
11 -- it is plainly not indicated as a fact that is not  
12 disputed. That is to say, it's not on the list at paragraph  
13 2 of Mr. Dahiya's submission.

14 MR. ROSEN: It's not -- just not responded to.

15 THE COURT: It's also not on the list at paragraph  
16 10. So --

17 MR. ROSEN: We go by the old rule that if it's not  
18 objected to, it's admitted. But one way or the other,  
19 that's our allegation, Your Honor. Perhaps they just denied  
20 from -- I don't know why it's done that way, but that's how  
21 it was done.

22 Paragraph 9 lays out -- or rather paragraph 19 was  
23 admitted and lays out the constitutional tort. They did not  
24 -- I do not believe they agreed with paragraph -- you know,  
25 paragraphs 20 and 21, she would testify -- lay out, really,

1 the legal theory that there is no such thing as a  
2 constitutional tort. That was laid out in the papers.

3 And then, in paragraph 20 -- in paragraphs 22  
4 through 31, Your Honor, my recollection is and my marked  
5 pleadings shows this is the recitation by the trustee, the  
6 other actions brought by Mr. Dahiya, all of which are part  
7 of this Court's record, which were also part of the  
8 submissions and are deemed -- have already been deemed in  
9 evidence, laying out the course of tactics of suing trustees  
10 in the other actions, and what transpired. And Mr. Dahiya  
11 did not respond one way or the other to those allegations in  
12 his pretrial, but it's our position that they would be in  
13 evidence because they're all part of the Court -- the  
14 larger --

15 THE COURT: The disagreement in the parties'  
16 submissions is to the, broadly speaking, is to the point of  
17 whether other matters are relevant here, whether things that  
18 took place in other cases are relevant here. That's an  
19 interesting question.

20 It's -- there are underlying facts, most of which  
21 are record facts, and there's the more general, arguably  
22 legal, question as to whether that makes a difference here.  
23 That's a question for me, not for the parties to agree or  
24 disagree on.

25 MR. ROSEN: Correct, Your Honor. And we had --

1 when Mr. Greenwald was here, we had a long discussion about  
2 that. And I -- you didn't -- I may have misspoke earlier  
3 when I said you ruled, I think you led -- you said how you  
4 were inclined, but I don't think you -- I think you said  
5 something very similar to what you just said. That was for  
6 you to decide, and for us to hear.

7 So, paragraph 32 was admitted and that lays forth  
8 the trustee's fiduciary duty, and that he sought a temporary  
9 and then permanent injunction against her and counsel from  
10 commencing any adversary proceedings before this Court.

11 You know, interestingly enough, Your Honor, under  
12 this action, I would interject as part of the proffer is  
13 that Mr. Dahiya proposed the type of injunction that we're  
14 requesting against him against us in the motion practice.  
15 So, I don't know if there's an estoppel argument there or  
16 not, but it was part of the claim that he raised in the  
17 action.

18 He had no response to paragraphs 33, 34. And the  
19 rest of the pretrial statement, I believe, then reverts to  
20 mostly the legal arguments through paragraph 39.

21 And then in paragraph 40, Your Honor, we let out  
22 -- we set forth what we were seeking in terms of damages,  
23 and that was an award of compensation in the amount, at that  
24 time, of what my attorney's were through that date of  
25 \$18,336, Your Honor. That was, of course, as of the date

1 when this had to be filed, which was June 1.

2 I have prepared and am giving to -- let the record  
3 reflect I'm giving Mr. Dahiya a copy of an updated bill as  
4 of last night.

5 Your Honor, may I approach?

6 THE COURT: You may pass it to Ms. Jackson (ph).

7 MR. ROSEN: The additional time spent in this  
8 matter, including you know preparing the settlement  
9 documents, and everything else, including allocating, I  
10 think, three hours for today, which might have been a little  
11 light, of an additional \$10,308.15 in time and additional  
12 disbursements of \$131.87, which makes the total amount of  
13 compensatory damages in terms of the legal fees incurred of  
14 \$28,776.02.

15 That does not include -- the trustee, if called to  
16 testify, would say that she was required, so far, I think,  
17 to only on the -- because we managed to get the counter-  
18 claims dismissed in the other two actions. In the second  
19 one, I think she only had an outlay of \$60 that she actually  
20 had to pay on the first deductibles.

21 But, as she would testify, her deductible, if any  
22 subsequent actions were filed, which comes back to the  
23 argument about the injunction, she would be -- now have a  
24 deductible of \$5,000 per occurrence, as opposed to \$2,500  
25 per occurrence that she would be responsible for if she were

1 sued again in this matter, or in any other matter as a  
2 result of these claims having been filed.

3 I'm not quite sure how you monetize that future  
4 event, and maybe the inability to do it -- that is part of  
5 the basis for injunctive relief.

6 Your Honor, I think under the legal standard, we  
7 then laid out the legal arguments. Those, I think, are the  
8 operative facts. I think what flows from them has been the  
9 subject of a lot of debate.

10 With that proffer, Your Honor, and I also, after  
11 she's done, if Mr. Dahiya wants, I'll be happy to take the  
12 stand, and he can question me about anything on my legal  
13 fees.

14 I would -- I would rest, and if Mr. Dahiya wishes  
15 to cross-examine the trustee, he may.

16 THE COURT: All right. Thank you.

17 Ms. Kramer, you have heard your counsel's  
18 recitation as to what your testimony would be if you were  
19 called to stand, and put under oath, and asked questions.  
20 Does that follow the statements in the statement of material  
21 facts not in dispute and otherwise your record as referenced  
22 by Mr. Rosen? If you were called to the stand and sworn to  
23 tell the truth and were asked questions those areas, would  
24 your testimony be the same as that which has been identified  
25 by your counsel?

1 MS. KRAMER: My deductible has been increased from  
2 the time -- the policy runs from year to year. So, the  
3 deductible has been increased as indicated by Mr. Rosen.

4 I had received an invoice of approximately \$60 for  
5 work that was done by the law firm that the carrier  
6 selected. I have not yet paid that invoice, but will be  
7 paying that invoice. And that -- my understanding is that  
8 that's the only amount that's outstanding with respect to  
9 these claims because they were withdrawn before any other  
10 work was done by the law firm.

11 THE COURT: With respect to all of the other  
12 matters, including the record of this case, would your  
13 testimony be the same as that described by Mr. Rosen with  
14 reference to the pre-hearing statement that was filed at --  
15 that was filed by your counsel?

16 MS. KRAMER: Yes.

17 THE COURT: All right.

18 Mr. Dahiya, would you like to cross-examine the  
19 trustee?

20 MR. DAHIYA: No, I don't. I explained previously.  
21 I don't have a lawyer. I'm not participating in the  
22 proceeding. So, it's up to you to let them --

23 THE COURT: Mr. Dahiya, it's not up to me whether  
24 you would like to cross-examine.

25 MR. DAHIYA: I will not -- I don't have an



1 attorney, and I don't consent to the jurisdiction of this  
2 Court, Your Honor, respectfully. So, I have -- this  
3 dispute, I raise the issue that it should be heard by an  
4 Article III Judge and this is my opinion.

5 And for this Court, I don't have an attorney, so I  
6 don't want to say anything. I'm not participating in any  
7 fashion.

8 THE COURT: Mr. Dahiya, I note your appearance  
9 here. I note that you are an officer of this Court. And I  
10 note that you have filed cases in this Court, and filed  
11 documents in this Court this week. So, at least to that  
12 extent, you are functioning as an officer of this Court in  
13 other matters. And I recognize that your role as the  
14 subject of this motion is different than your role as  
15 counsel to your clients in those cases.

16 I will ask you one more time to indicate  
17 affirmatively if you wish to cross-examine the trustee.

18 MR. DAHIYA: I will not -- I'm not participating  
19 in the proceeding. So, I will not.

20 THE COURT: Mr. Dahiya, I don't understand that  
21 response.

22 MR. DAHIYA: I'm not participating. I cannot say  
23 yes or no. I just -- I'm not -- I don't have a counsel. I  
24 wish I could have had a counsel here in this case, and I  
25 made it very clear, Your Honor, so please don't ask me if I

1 want to examine and cross-examine, treat as if I'm not here  
2 for this purpose, I'm here --

3 THE COURT: Mr. Dahiya, with the greatest respect,  
4 this is my courtroom, not yours. And I will determine what  
5 questions I will ask. And I respectfully encourage you as  
6 an officer of the Court to do your best to be responsive to  
7 my questions.

8 MR. DAHIYA: As an officer of the Court, I'm aware  
9 of the -- that I'm the target of this motion, Your Honor,  
10 and I'm here because I have respect for you. I have  
11 tremendous respect for you. There's no doubt about it. And  
12 my -- I made myself very clear in my pleadings. It's up to  
13 you how you treat this.

14 THE COURT: Well, that's true.

15 MR. DAHIYA: I'll leave it to your discretion,  
16 Your Honor, and --

17 THE COURT: All right. Well, you have not  
18 indicated that you would like to cross-examine the trustee,  
19 so I will take -- I will accept the proffer.

20 Do you have anything further to put into the  
21 record, Mr. Rosen?

22 MR. ROSEN: Your Honor, the only other matter I  
23 have into the record, not to have a repeat of prior  
24 conversation, but for the purposes of a complete record, I  
25 also offer myself if he wishes to cross-examine me as to any

1 of the elements in the bill. I offer my own -- as an  
2 officer of the Court, I have put in my time. I have  
3 reviewed it thoroughly. I believe -- I have only put in  
4 those items that relate to this proceeding and not to  
5 anything else.

6 And if he wishes to cross-examine me on my bill,  
7 or if the Court wishes to ask any questions about my bill,  
8 I'm prepared to take the stand.

9 THE COURT: All right. The record will indicate  
10 that you have provided to Mr. Dahiya and to the Court a  
11 three page document that begins with the reference "law  
12 offices of Avrum J. Rosen, PLLC," and with time entries  
13 beginning on June 8, 2012 --

14 MR. ROSEN: Your Honor, yes. The --

15 THE COURT: -- through November 14, 2012.  
16 Disbursement charges. It also includes an estimated time  
17 entry of -- on November 29th of three hours. And, of  
18 course, many other indications are made, but --

19 MR. ROSEN: And, Your Honor, and the --

20 THE COURT: So, I take it you're offering this as  
21 further evidence on the record in support of your damages  
22 application?

23 MR. ROSEN: Yes, and I would ask that it be marked  
24 as probably exhibit K -- K1, actually, because the other  
25 bill is K. And I would also ask that all of the other

1 marked exhibits, which were A through K, attached to the  
2 pretrial which were not objected to, be placed into  
3 evidence.

4 THE COURT: All right. And the -- and,  
5 Mr. Dahiya, any objection?

6 MR. DAHIYA: Same thing, Your Honor.

7 THE COURT: All right. In the absence of an  
8 objection, the -- and noting that the Court's pretrial order  
9 and prior directions to the parties requested the submission  
10 of exhibits and that has been done, and no written objection  
11 has been interposed, so I will receive in evidence the  
12 exhibits that have been identified for the parties.

13 (Plaintiff's Exhibits A through K were marked and  
14 admitted)

15 (Plaintiff's Exhibit K-1 was marked and admitted)

16 THE COURT: Anything further, Mr. Rosen?

17 MR. ROSEN: Your Honor, under these circumstances,  
18 I think enough has been said in the papers and in the  
19 preliminary statements. It's been a long day. I will waive  
20 any closing statement. I have nothing further, Your Honor.

21 THE COURT: All right. Mr. Dahiya, you can -- the  
22 trustee rests, you can put in a case if you wish.

23 MR. DAHIYA: I have nothing to say.

24 THE COURT: All right. Thank you, Mr. Dahiya.

25 MR. DAHIYA: Yes, Your Honor.

1 THE COURT: Mr. Rosen -- well, Mr. Dahiya, you can  
2 make a closing argument if you'd like. Waive argument?

3 Mr. Rosen, would you like to make a closing  
4 argument or do you waive closing?

5 MR. ROSEN: No, Your Honor, I waive that also. I  
6 think -- as I said, I think -- I don't think there's  
7 anything about this that you haven't been made aware of at  
8 least a couple of times and been through it. I see no  
9 reason to belabor this any further.

10 THE COURT: All right.

11 MR. ROSEN: You have everything in front of you.  
12 And good luck.

13 THE COURT: All right. There are two matters  
14 before me today. The first is the adjourned telephonic  
15 conference on the letter. I'm going to mark that off the  
16 calendar and that will be so ordered.

17 The next is the adjourned hearing on the motion  
18 for sanctions under 28 U.S.C. 1927 and I'm going to mark  
19 that submitted. This is the fifth, or sixth calendar  
20 hearing, at least the third hearing held, in fact. At this  
21 point, I would no longer be doing my job if I simply  
22 continued to exhort Mr. Dahiya to get counsel and the  
23 parties to determine if there was a productive,  
24 professional, and consensual way to resolve the issues that  
25 are framed by the motion.

1 I've indicated, perhaps by my questions and  
2 comments, that I have the greatest respect and the gravest  
3 concerns about the issues -- for the participants and about  
4 the issues that are presented here. And I would continue to  
5 make the processes of this Court available for any  
6 productive disposition. But at this point, having done that  
7 so many times, noting that we have settled once and that's  
8 not come to fruition, I think there really is no course left  
9 but to mark it submitted and do my best to get you a  
10 thoughtful and an appropriate determination, aware of all of  
11 the motions that are pending, and the concerns that have  
12 been expressed about this Court's authority and  
13 jurisdiction. And I take those as two different things.

14 And mindful of the prospect that when an order is  
15 entered, it may also be -- it may also be described, and may  
16 well be described as to the extent necessary, proposed  
17 findings and conclusions following the framework established  
18 by local rules or procedures adopted in other Courts in this  
19 Circuit, including the Southern District of New York and the  
20 District of Vermont, and Courts in other Circuits, including  
21 the District of Delaware and, I believe, the District of  
22 Maryland.

23 So, thank you. Thank you very much.

24 MR. ROSEN: Your Honor, I have two other matters  
25 on.

1 THE COURT: All right. And we'll call them very  
2 shortly. I want to take a very short break.

3 MR. ROSEN: Okay.

4 THE COURT: We need to do some rearranging here.  
5 All right?

6 MR. ROSEN: Thank you.

7 (Whereupon these proceedings were concluded at 3:13 PM)

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I N D E X

OPENING STATEMENTS:	PAGE
BY MR. ROSEN	10
BY MR. DAHIYA	19

E X H I B I T S

PARTY	NO	DESCRIPTION	ID./EVID.
Plaintiff	A-K	Attachments to pretrial submission	44
	K-1	Rosen bill, June-November 2012	44



I N D E X

RULINGS

Page Line

Telephonic Conference (RE: related 45 16  
document(s) 41 Letter filed by  
Counter-Defendant Debra Kramer as  
Trustee of the Estate of Shahara Khan,  
Plaintiff Debra Kramer as Trustee of  
the Estate of Shahara Khan)

C E R T I F I C A T I O N

I, Jamie Gallagher, certify that the foregoing transcript is  
a true and accurate record of the proceedings.

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: December 4, 2012

## United States Bankruptcy Court

Eastern District of New York  
271 Cadman Plaza East, Suite 1595  
Brooklyn, NY 11201-1800

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IN RE:

CASE NO: 1-11-01520-ess

Kramer as Trustee of the Estate of Shahara  
Khan v. Mahia et al

SSN/TAX ID:

ADVERSARY

DEBTOR(s)

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### NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION

Notice is hereby given that:

A transcript of the proceeding held on November 30, 2012 was filed on December 6, 2012 .

The following deadlines apply:

The parties have until December 13, 2012 to file with the court a Notice of Intent to Request Redaction of this transcript. The deadline for filing a Transcript Redaction Request is December 27, 2012.

If a Transcript Redaction Request is filed, the redacted transcript is due January 7, 2013.

If no such Notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is March 6, 2013 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber VERITEXT REPORTING COMPANY, (516)608-2400 or you may view the document at the public terminal at the Office of the Clerk.

Dated: December 7, 2012

For the Court, Robert A. Gavin, Jr., Clerk of Court

**Notice Recipients**

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Case: 1-11-01520-ess

User: jlecky  
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